

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

Case Number: 1:12-cv-00257-JB-LFG

LARRY GOLDSTONE, CLARENCE G. SIMMONS,  
III, and JANE E. STARRETT,

Defendants.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S  
NOTICE OF SUPPLEMENTAL AUTHORITY**

*SEC v. Syron* is readily distinguishable from this case. In *Syron*, the SEC alleged, and the Court accepted for purposes of deciding the motion to dismiss, that Freddie Mac's disclosures were ambiguous, obscuring between \$135 billion and \$238 billion in subprime MBS exposure. No. 11 Civ. 9201, 2013 WL 1285572, at \*4, 17 (S.D.N.Y. Mar. 28, 2013) (statements "reinforce[ed]...misimpress[ions]" about risk to investors).

This case bears no resemblance to *Syron*. Here, the SEC challenges the validity of Thornburg's other-than-temporary impairment ("OTTI") analysis. *See, e.g.*, Compl. ¶¶ 8, 50-56, 71. Unlike the factual and readily verifiable disclosures in *Syron*, the OTTI-related disclosures here were statements of *opinion* reflecting a complex, subjective and forward-looking accounting judgment. To establish that Thornburg's OTTI disclosures were misleading, Plaintiff must show that the OTTI judgment was both objectively and subjectively false.<sup>1</sup> There was no such issue in *Syron*.

In addition, Thornburg's Form 10-K made crystal clear not only the company's unrealized losses (approximately \$428 million), but also the associated risks, disclosing, among

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<sup>1</sup>As set forth in Defendants' briefing on their motions to dismiss, the Complaint's allegations in this regard do not state a claim under the securities laws. *See* [Doc. 35 at 43-47.]

other things, (1) Thornburg's diminished liquidity as a result of meeting margin calls "in excess of \$300 million" in the two weeks preceding the 10-K filing, (2) the risk of receiving additional margin calls Thornburg could not repay, and (3) the possible "need to sell assets under adverse market conditions or at losses[.]" See Form 10-K (Feb. 28, 2008), [Doc. 37, Ex. 2 at 36-37, 48-49]. Unlike in *Syron*, these risks were so starkly conveyed to the market that Thornburg's stock price immediately declined 18% and repo lenders reacted by issuing \$157,500,000 in margin calls the very day the 10-K was filed. See [Doc. 35 at 21-22]; Compl. ¶¶ 9, 41, 91.

Contrary to Plaintiff's unsupported characterizations, this is not a case of "half-truths" or understating risks. *Syron* is inapposite and lends no support to Plaintiff's speculative claims.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 29, 2013, Defendants' Response to Plaintiff's Notice of Supplemental Authority was electronically filed with the Clerk of Court using the CM/ECF system that will send notification of such filing to all counsel of record.

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